

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Carol A. Kippenberger
20 Hospital Avenue, 2nd Floor
Manchester, NH 03101

Plaintiff

v.

Metropolitan Life Insurance
Company
One Madison Avenue
New York, NY 10010

Defendant

Civil Action:

COMPLAINT

I. Introduction:

1. This is an action under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1132(a)(1)(B) “ERISA” to recover benefits due under a long-term disability insurance plan (the “Plan”) issued by Metropolitan Life Insurance Company (“MetLife”) for the benefit of employees of Home Depot.

II. Jurisdiction:

2. This Court has jurisdiction over this claim pursuant to 29 U.S.C. §1132(e)(1).
3. Venue is appropriate under 29 U.S.C. §1132(e)(1) in that the plaintiff currently resides in New Hampshire and was a resident here at the time the defendant denied her claim for long-term disability benefits.

III. Parties:

4. The plaintiff, Carol A. Kippenberger, resides at 20 Hospital Avenue, 2nd Floor, Manchester, New Hampshire, 03101.
5. The defendant, MetLife, is an insurance company with a principal place of

business at One Madison Avenue, New York, New York, 10010.

IV. **Factual Allegations:**

6. In or around April of 2003, the plaintiff, Carol A. Kippenberger, became totally disabled by various medical and psychiatric conditions.
7. The plaintiff was insured for both short-term and long-term disability benefits by the defendant, through her employer, Home Depot.
8. The plaintiff began receiving short-term disability benefits from the defendant, due to her total disability, in April of 2003.
9. The defendant terminated the plaintiff's short-term disability benefits as of August 20, 2003, based upon the records review of a psychiatrist who had never cared for, examined, nor spoken to the plaintiff.
10. By letter dated September 23, 2003, the defendant also denied the plaintiff's claim for long-term disability benefits due to an alleged failure on the part of the plaintiff to provide information in support of such a claim.
11. The defendant explained in its letter of September 23, 2003 that because long-term disability benefits were being denied:

You may appeal this decision by sending a written request for appeal to MetLife Disability, P.O. Box 14592, Lexington, Kentucky, 40511-4592 within 180 days after you receive this denial letter. Please include in your appeal letter the reason(s) you believe the claim was improperly denied, and submit the previously requested information as well as any additional comments, documents, records or other information relating to your claim that you deem appropriate for us to give your appeal proper consideration.

12. The plaintiff complied with the requirements as set forth in the defendant's denial letter dated September 23, 2003, by filing an appeal on March 5, 2004 explaining the reasons why the claim was improperly denied and submitting medical records and reports and other information in support of her appeal.
13. Also contained in the defendant's denial letter of September 23, 2003 was the following language:

MetLife will evaluate all the information and advise you of our determination of your appeal within 45 days after we receive your written request for appeal.

14. To date, the defendant has failed or refused to make a determination of the plaintiff's appeal of her denial of long-term disability benefits.

V. **Causes of Action:**

A. **Denial of Benefits:**

15. The plaintiff repeats, re-alleges, and incorporates herein all allegations and facts set forth above.
16. The plaintiff is an insured and claimant under the Plan.
17. The plaintiff filed a timely appeal from the defendant's denial of her claim for long-term disability benefits.
18. 29 CFR §2560.503-1(i)(3) requires that a plan administrator notify a claimant of the determination on review of disability claims not later than 45 days after receipt of the claimant's request for review.
19. The defendant failed to notify the plaintiff of its determination on review of her claim within 45 days, which constitutes a denial of her claim and an exhaustion of the Plan's administrative remedies.
20. The plaintiff is entitled to a *de novo* review by this Court of the denial of her disability claim in order to have the merits of her appeal determined.
21. The plaintiff is entitled to benefits under the Plan, retroactive to October 30, 2003.

B. **Attorneys' Fees:**

22. The plaintiff repeats, re-alleges, and incorporates herein all allegations and facts set forth above.
23. Pursuant to 29 U.S.C. §1132(g)(1), the plaintiff is entitled to an award of her attorneys' fees and costs incurred in connection with this claim.

VI. **Prayer for Relief:**

WHEREFORE, the plaintiff, Carol A. Kippenberger, respectfully prays for the following relief:

- A. An Order that she is entitled to long-term disability benefits under the Plan retroactive to October 30, 2003;
- B. An award of costs and attorneys' fees pursuant to 29 U.S.C. §1132(g)(1);

- C. An award of pre-judgment and post-judgment interest; and
- D. Such other and further relief that is just and equitable.

Respectfully submitted,

CAROL A. KIPPENBERGER

By her attorneys,

HALL STEWART, PA

Dated: June 24, 2005

By: /S/ Randolph J. Reis

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